

Alexander Hernaez (SBN: 201441)
ahernaez@foxrothschild.com
Lee Szor (SBN: 276381)
lszor@foxrothschild.com
FOX ROTHSCHILD LLP
345 California Street, Suite 2200
San Francisco, CA 94104
Telephone: 415.364.5540
Facsimile: 415.391.4436

Attorneys for Defendant SPACEX

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GILBERT GUZMAN;

Plaintiff,

v.

SPACE EXPLORATION
TECHNOLOGIES CORP., a
Delaware corporation; and DOES 1
through 60, inclusive,

Defendants.

Case No.: 2:15-cv-06000-R-RAO

**DEFENDANT SPACEX'S ANSWER
TO PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR DAMAGES**

Complaint Filed: March 9, 2015
FAC Filed: November 18, 2015
Trial: May 17, 2016

1 Defendant SpaceX ("Defendant") submits its Answer to the First Amended
2 Complaint for Damages ("Complaint") of Plaintiff Gilbert Guzman ("Plaintiff") as
3 follows:

4 Defendant denies each and every allegation in the Complaint not
5 specifically admitted herein. Defendant further denies that Plaintiff has suffered
6 any injury, damage, or loss by reason of any act or omission on the part of
7 Defendant, denies that Plaintiff has been damaged in any amount whatsoever, and
8 denies that Defendant owes Plaintiff any amounts whatsoever.

9 Responding specifically to the numbered allegations contained in the
10 Complaint, Defendant states the following:

11 1. Defendant admits that it employed Plaintiff Gilbert Guzman in
12 Hawthorne, California. Defendant lacks information and knowledge sufficient to
13 form a belief as to the truth of the remaining allegations in this paragraph, and on
14 that basis denies those allegations in their entirety

15 2. Admitted.

16 3. Defendant lacks information and knowledge sufficient to form a belief
17 as to the truth of these allegations and, on that basis, denies them in their entirety.

18 4. Denied as to the allegations pertaining to Defendant. To the extent the
19 allegations pertain to Doe defendants, Defendant lacks information and knowledge
20 sufficient to form a belief as to the truth of the allegations and, on that basis, denies
21 them in their entirety. To the extent the paragraph contains arguments and legal
22 conclusions, Defendant is not required to respond.

23 5. Denied as to the allegations pertaining to Defendant. To the extent the
24 allegations pertain to Doe defendants, Defendant lacks information and knowledge
25 sufficient to form a belief as to the truth of the allegations and, on that basis, denies
26 them in their entirety. To the extent the paragraph contains arguments and legal
27 conclusions, Defendant is not required to respond.

1 6. Denied as to the allegations pertaining to Defendant. To the extent the
2 allegations pertain to Doe defendants, Defendant lacks information and knowledge
3 sufficient to form a belief as to the truth of the allegations and, on that basis, denies
4 them in their entirety. To the extent the paragraph contains arguments and legal
5 conclusions, Defendant is not required to respond.

6 7. Denied as to the allegations pertaining to Defendant. To the extent the
7 allegations pertain to Doe defendants, Defendant lacks information and knowledge
8 sufficient to form a belief as to the truth of the allegations and, on that basis, denies
9 them in their entirety. To the extent the paragraph contains arguments and legal
10 conclusions, Defendant is not required to respond.

11 8. Denied as to the allegations pertaining to Defendant. To the extent the
12 allegations pertain to Doe defendants, Defendant lacks information and knowledge
13 sufficient to form a belief as to the truth of the allegations and, on that basis, denies
14 them in their entirety. To the extent the paragraph contains arguments and legal
15 conclusions, Defendant is not required to respond.

16 9. Denied except that Defendant admits Plaintiff filed Charges with the
17 California DFEH. The Charges speak for themselves. Defendant denies that this
18 Lawsuit is timely filed.

19 **GENERAL ALLEGATIONS**

20 10. Defendant admits that it employed Plaintiff Gilbert Guzman as a
21 Propulsion Technician from on or about August 18, 2008, to on or about August
22 13, 2014.

23 11. Defendant admits that, on July 7, 2014, Plaintiff sent an email to
24 Heather Lord (Defendant's former Benefits and Relocation Specialist), Jacob Braff
25 (Defendant's Propulsion Production Supervisor), and Gustavo Litvin (Defendant's
26 Lead Propulsion Technician), stating "I've been having lower back pain for some
27 time now so I took the liberty of seeing a [sic] Orthopedic Dr today to have my
28

1 back checked out. The Dr. has put me on two weeks rest and scheduled an MRI for
2 tomorrow. I have attached the prescription and contact information for your files. I
3 shall keep you posted on the MRI results and plan to return as soon as I get the
4 Dr's ok." The remaining statements in paragraph 11 constitute arguments and legal
5 conclusions to which Defendant is not required to respond.

6 12. Defendant admits that, on July 7, 2014, Plaintiff sent an email to
7 Heather Lord (Defendant's former Benefits and Relocation Specialist), Jacob Braff
8 (Defendant's Propulsion Production Supervisor), and Gustavo Litvin (Defendant's
9 Lead Propulsion Technician), stating "I've been having lower back pain for some
10 time now so I took the liberty of seeing a [sic] Orthopedic Dr today to have my
11 back checked out. The Dr. has put me on two weeks rest and scheduled an MRI for
12 tomorrow. I have attached the prescription and contact information for your files. I
13 shall keep you posted on the MRI results and plan to return as soon as I get the
14 Dr's ok." Defendant denies the remaining allegations in this paragraph.

15 13. Defendant admits that Elon Musk emailed employees about raises and
16 stock awards on July 18, 2014. Defendant denies the remaining allegations in this
17 paragraph.

18 14. Defendant admits receiving from Plaintiff an email attaching what
19 appeared to be a doctor's note prescribing that Plaintiff remaining off work
20 through August 7, 2017. Defendant denies receiving a doctor's note extending
21 Plaintiff's leave to August 22, 2014, or any communication from Plaintiff to that
22 effect, during Plaintiff's employment.

23 15. Defendant admits that, on August 13, 2014, Defendant received a
24 letter dated July 22, 2014 from Plaintiff's counsel stating that Plaintiff's leave was
25 a result of an industrial injury and that Defendant should communicate with
26 Plaintiff's counsel regarding the alleged injury.

1 16. Defendant admits that, on August 6, 2014, Plaintiff emailed
 2 Defendant to request his written review and inquire about retroactive pay.
 3 Defendant further admits that, on July 29, 2014, Jacob Braff sent Plaintiff an
 4 emailing stating, "I'd like to go over the review in person as I did with everyone
 5 else. We can do this upon your return. Get well, Jacob Braff." Defendant further
 6 admits that, on August 6, 2014, Jacob Braff informed Plaintiff via email, "I can't
 7 finalize the review until I go over it with you in person. We can meet tomorrow to
 8 go over this." Defendant denies the remaining allegations in this paragraph.

9 17. Defendant admits that, on August 6, 2014, Plaintiff sent Defendant an
 10 email stating, "Hi, will you please let me know who I can speak to in H.R., I have
 11 some questions to ask. Thanks, Gilbert Guzman."

12 18. Defendant admits that, on August 6, 2014, Monica Jáuregui sent Long
 13 Kim Tran an email stating, "Long, Can you please contact Gilbert for his
 14 questions? Thanks! Best, Monica Jauregui[,] Security Officer" Defendant denies
 15 the remaining allegations in this paragraph.

16 19. Defendant admits that Plaintiff abandoned his job. Defendant admits
 17 that the "Closing Statement" dated August 7, 2014, states, "Termination Date: 08-
 18 August-2014." Defendant denies the remaining allegations in this paragraph.

19 20. Admitted except that Catarina Lewis (née Pham) was Defendant's
 20 Human Resources Representative.

21 **FIRST CLAIM**

22 21. Defendant repeats and incorporates by reference each of its responses
 23 to paragraphs 1 through 20 of the Complaint.

24 22. This paragraph contains arguments and legal conclusions and
 25 therefore no response is required.

26 23. Defendant admits that Plaintiff took time off for an alleged injury to
 27 his back and that, according to statements received from Plaintiff and/or his
 28

1 physician, he was cleared to return to work without restriction effective August 7,
2 2014. Defendant lacks information and knowledge sufficient to form a belief as to
3 the truth of the remaining factual allegations and, on that basis, denies them in their
4 entirety. To the extent this paragraph contains arguments and legal conclusions,
5 Defendant is not required to respond.

6 24. Defendant admits that Plaintiff took time off for to an alleged injury to
7 his back and that, according to statements received from Plaintiff and/or his
8 physician, he Plaintiff was cleared to return to duty without restriction effective
9 August 7, 2014. To the extent this paragraph contains arguments and legal
10 conclusions, Defendant is not required to respond.

11 25. Defendant admits that Plaintiff took time off for to an alleged injury to
12 his back and that, according to statements received from Plaintiff and/or his
13 physician, he Plaintiff was cleared to return to duty without restriction effective
14 August 7, 2014. To the extent this paragraph contains arguments and legal
15 conclusions, Defendant is not required to respond.

16 26. Defendant admits that Plaintiff took time off for to an alleged injury to
17 his back and that, according to statements received from Plaintiff and/or his
18 physician, he Plaintiff was cleared to return to duty without restriction effective
19 August 7, 2014. To the extent this paragraph contains arguments and legal
20 conclusions, Defendant is not required to respond.

21 27. Denied.

22 28. Denied. To the extent the allegations pertain to Doe defendants,
23 Defendant lacks information and knowledge sufficient to form a belief as to the
24 truth of the remaining allegations and, on that basis, denies them in their entirety.

25 29. Defendant denies that Plaintiff has suffered any injury, damage, or
26 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
27

1 has been damaged in any amount whatsoever, and denies that Defendant owes
2 Plaintiff any amounts whatsoever.

3 30. Defendant denies that Plaintiff has suffered any injury, damage, or
4 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
5 has been damaged in any amount whatsoever, and denies that Defendant owes
6 Plaintiff any amounts whatsoever.

7 31. Defendant denies that Plaintiff has suffered any injury, damage, or
8 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
9 has been damaged in any amount whatsoever, and denies that Defendant owes
10 Plaintiff any amounts whatsoever.

11 32. Denied as to the allegations pertaining to Defendant. To the extent the
12 paragraph contains arguments and legal conclusions, Defendant is not required to
13 respond.

14 33. Denied as to the allegations pertaining to Defendant. To the extent the
15 paragraph contains arguments and legal conclusions, Defendant is not required to
16 respond.

17 34. This paragraph contains arguments and legal conclusions and
18 therefore no response is required.

19 **SECOND CLAIM**

20 35. Defendant repeats and incorporates by reference each of its responses
21 to paragraphs 1 through 34 of the Complaint.

22 36. This paragraph contains arguments and legal conclusions and
23 therefore no response is required. To the extent the allegations pertain to Doe
24 defendants, Defendant lacks information and knowledge sufficient to form a belief
25 as to the truth of the remaining allegations and, on that basis, denies them in their
26 entirety.

1 37. Denied as to the allegations pertaining to Defendant. To the extent the
2 allegations pertain to Doe defendants, Defendant lacks information and knowledge
3 sufficient to form a belief as to the truth of the remaining allegations and, on that
4 basis, denies them in their entirety. To the extent the paragraph contains arguments
5 and legal conclusions, Defendant is not required to respond.

6 38. Denied as to the allegations pertaining to Defendant. To the extent the
7 allegations pertain to Doe defendants, Defendant lacks information and knowledge
8 sufficient to form a belief as to the truth of the remaining allegations and, on that
9 basis, denies them in their entirety. To the extent the paragraph contains arguments
10 and legal conclusions, Defendant is not required to respond.

11 39. Denied as to the allegations pertaining to Defendant. To the extent the
12 allegations pertain to Doe defendants, Defendant lacks information and knowledge
13 sufficient to form a belief as to the truth of the remaining allegations and, on that
14 basis, denies them in their entirety. To the extent the paragraph contains arguments
15 and legal conclusions, Defendant is not required to respond.

16 40. Defendant denies that it has caused Plaintiff the damages alleged or
17 that it engaged in wrongful conduct. Defendant lacks information and knowledge
18 sufficient to form a belief as to the truth of the remaining allegations and, on that
19 basis, denies them in their entirety.

20 41. Defendant denies that it has caused Plaintiff the damages alleged or
21 that it engaged in wrongful conduct. Defendant lacks information and knowledge
22 sufficient to form a belief as to the truth of the remaining allegations and, on that
23 basis, denies them in their entirety.

24 42. Defendant denies that it has caused Plaintiff the damages alleged.
25 Defendant lacks information and knowledge sufficient to form a belief as to the
26 truth of the remaining allegations and, on that basis, denies them in their entirety.
27

1 To the extent the paragraph contains arguments and legal conclusions, Defendant
2 is not required to respond.

3 43. Denied as to the allegations pertaining to Defendant. To the extent the
4 paragraph contains arguments and legal conclusions, Defendant is not required to
5 respond.

6 44. Denied as to the allegations pertaining to Defendant. To the extent the
7 paragraph contains arguments and legal conclusions, Defendant is not required to
8 respond.

9 45. This paragraph contains arguments and legal conclusions and
10 therefore no response is required.

11 **THIRD CLAIM**

12 46. Defendant repeats and incorporates by reference each of its responses
13 to paragraphs 1 through 45 of the Complaint.

14 47. Denied as to the allegations pertaining to Defendant. To the extent the
15 allegations pertain to Doe defendants, Defendant lacks information and knowledge
16 sufficient to form a belief as to the truth of the remaining allegations and, on that
17 basis, denies them in their entirety. To the extent the paragraph contains arguments
18 and legal conclusions, Defendant is not required to respond.

19 48. Denied as to the allegations pertaining to Defendant. To the extent the
20 allegations pertain to Doe defendants, Defendant lacks information and knowledge
21 sufficient to form a belief as to the truth of the remaining allegations and, on that
22 basis, denies them in their entirety. To the extent the paragraph contains arguments
23 and legal conclusions, Defendant is not required to respond.

24 49. Denied as to the allegations pertaining to Defendant. To the extent the
25 allegations pertain to Doe defendants, Defendant lacks information and knowledge
26 sufficient to form a belief as to the truth of the remaining allegations and, on that
27

1 basis, denies them in their entirety. To the extent the paragraph contains arguments
2 and legal conclusions, Defendant is not required to respond.

3 50. Defendant denies that it has caused Plaintiff the damages alleged or
4 that it engaged in wrongful conduct. Defendant lacks information and knowledge
5 sufficient to form a belief as to the truth of the remaining allegations and, on that
6 basis, denies them in their entirety.

7 51. Defendant denies that it has caused Plaintiff the damages alleged or
8 that it engaged in wrongful conduct. Defendant lacks information and knowledge
9 sufficient to form a belief as to the truth of the remaining allegations and, on that
10 basis, denies them in their entirety.

11 52. Defendant denies that it has caused Plaintiff the damages alleged.
12 Defendant lacks information and knowledge sufficient to form a belief as to the
13 truth of the remaining allegations and, on that basis, denies them in their entirety.
14 To the extent the paragraph contains arguments and legal conclusions, Defendant
15 is not required to respond.

16 53. Denied as to the allegations pertaining to Defendant. To the extent the
17 paragraph contains arguments and legal conclusions, Defendant is not required to
18 respond.

19 54. Denied as to the allegations pertaining to Defendant. To the extent the
20 paragraph contains arguments and legal conclusions, Defendant is not required to
21 respond.

22 55. This is a legal allegation and therefore no response is required.

23 **FOURTH CLAIM**

24 56. Defendant repeats and incorporates by reference each of its responses
25 to paragraphs 1 through 55 of the Complaint.

26 57. This paragraph contains arguments and legal conclusions and
27 therefore no response is required.

1 58. Denied as to the allegations pertaining to Defendant. To the extent the
2 allegations pertain to Doe defendants, Defendant lacks information and knowledge
3 sufficient to form a belief as to the truth of the remaining allegations and, on that
4 basis, denies them in their entirety. To the extent the paragraph contains arguments
5 and legal conclusions, Defendant is not required to respond.

6 59. Denied as to the allegations pertaining to Defendant. To the extent the
7 allegations pertain to Doe defendants, Defendant lacks information and knowledge
8 sufficient to form a belief as to the truth of the remaining allegations and, on that
9 basis, denies them in their entirety. To the extent the paragraph contains arguments
10 and legal conclusions, Defendant is not required to respond.

11 60. Defendant denies that Plaintiff has suffered any injury, damage, or
12 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
13 has been damaged in any amount whatsoever, and denies that Defendant owes
14 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
15 sufficient to form a belief as to the truth of the remaining allegations and, on that
16 basis, denies them in their entirety. To the extent the paragraph contains arguments
17 and legal conclusions, Defendant is not required to respond.

18 61. Defendant denies that Plaintiff has suffered any injury, damage, or
19 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
20 has been damaged in any amount whatsoever, and denies that Defendant owes
21 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
22 sufficient to form a belief as to the truth of the remaining allegations and, on that
23 basis, denies them in their entirety. To the extent the paragraph contains arguments
24 and legal conclusions, Defendant is not required to respond.

25 62. Defendant denies that Plaintiff has suffered any injury, damage, or
26 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
27 has been damaged in any amount whatsoever, and denies that Defendant owes
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1 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
2 sufficient to form a belief as to the truth of the remaining allegations and, on that
3 basis, denies them in their entirety. To the extent the paragraph contains arguments
4 and legal conclusions, Defendant is not required to respond.

5 63. Denied as to the allegations pertaining to Defendant. To the extent the
6 paragraph contains arguments and legal conclusions, Defendant is not required to
7 respond.

8 64. Denied as to the allegations pertaining to Defendant. To the extent the
9 paragraph contains arguments and legal conclusions, Defendant is not required to
10 respond.

11 65. This paragraph contains arguments and legal conclusions and
12 therefore no response is required.

13 **FIFTH CLAIM**

14 66. Defendant repeats and incorporates by reference each of its responses
15 to paragraphs 1 through 65 of the Complaint.

16 67. This is a legal allegation and therefore no response is required.

17 68. Defendant admits that, on August 6, 2014, Plaintiff emailed
18 Defendant to request his written review and inquire about retroactive pay.
19 Defendant further admits that, on July 29, 2014, Jacob Braff sent Plaintiff an
20 emailing stating, "I'd like to go over the review in person as I did with everyone
21 else. We can do this upon your return. Get well, Jacob Braff." Defendant further
22 admits that, on August 6, 2014, Jacob Braff informed Plaintiff via email, "I can't
23 finalize the review until I go over it with you in person. We can meet tomorrow to
24 go over this." Defendant denies the remaining allegations in this paragraph.

25 69. Defendant admits that, on August 6, 2014, Plaintiff sent Defendant an
26 email stating, "Hi, will you please let me know who I can speak to in H.R., I have
27 some questions to ask. Thanks, Gilbert Guzman."

1 77. This paragraph contains arguments and legal conclusions and
2 therefore no response is required.

3 **SIXTH CLAIM**

4 78. Defendant repeats and incorporates by reference each of its responses
5 to paragraphs 1 through 77 of the Complaint.

6 79. This paragraph contains arguments and legal conclusions and
7 therefore no response is required.

8 80. This paragraph contains arguments and legal conclusions and
9 therefore no response is required.

10 81. Defendant admits that Plaintiff took time off for an alleged injury to
11 his back and that, according to statements received from Plaintiff and his
12 physician, was cleared to return to work without restriction on August 7, 2014.
13 Defendant lacks information and knowledge sufficient to form a belief as to the
14 truth of the remaining factual allegations and, on that basis, denies them in their
15 entirety. To the extent this paragraph contains arguments and legal conclusions,
16 Defendant is not required to respond.

17 82. Denied.

18 83. Denied as to the allegations pertaining to Defendant. To the extent the
19 paragraph contains arguments and legal conclusions, Defendant is not required to
20 respond.

21 84. Denied as to the allegations pertaining to Defendant. To the extent the
22 paragraph contains arguments and legal conclusions, Defendant is not required to
23 respond.

24 85. Defendant denies that Plaintiff has suffered any injury, damage, or
25 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
26 has been damaged in any amount whatsoever, and denies that Defendant owes
27 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
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1 sufficient to form a belief as to the truth of the remaining allegations and, on that
2 basis, denies them in their entirety.

3 86. Defendant denies that Plaintiff has suffered any injury, damage, or
4 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
5 has been damaged in any amount whatsoever, and denies that Defendant owes
6 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
7 sufficient to form a belief as to the truth of the remaining allegations and, on that
8 basis, denies them in their entirety.

9 87. Defendant denies that Plaintiff has suffered any injury, damage, or
10 loss by reason of any act or omission on the part of Defendant, denies that Plaintiff
11 has been damaged in any amount whatsoever, and denies that Defendant owes
12 Plaintiff any amounts whatsoever. Defendant lacks information and knowledge
13 sufficient to form a belief as to the truth of the remaining allegations and, on that
14 basis, denies them in their entirety. To the extent the paragraph contains arguments
15 and legal conclusions, Defendant is not required to respond.

16 88. Denied as to the allegations pertaining to Defendant. To the extent the
17 paragraph contains arguments and legal conclusions, Defendant is not required to
18 respond.

19 89. Denied as to the allegations pertaining to Defendant. To the extent the
20 paragraph contains arguments and legal conclusions, Defendant is not required to
21 respond.

22 90. This paragraph contains arguments and legal conclusions and
23 therefore no response is required.

24 91. This paragraph was omitted from the Complaint.

25 **SEVENTH CLAIM**

26 92. Defendant repeats and incorporates by reference each of its responses
27 to paragraphs 1 through 91 of the Complaint.

1 93. Denied as to the allegations pertaining to Defendant. To the extent the
2 paragraph contains arguments and legal conclusions, Defendant is not required to
3 respond.

4 94. This paragraph contains arguments and legal conclusions and
5 therefore no response is required.

6 95. Denied as to the allegations pertaining to Defendant. To the extent the
7 paragraph contains arguments and legal conclusions, Defendant is not required to
8 respond.

9 96. Denied as to the allegations pertaining to Defendant. To the extent the
10 paragraph contains arguments and legal conclusions, Defendant is not required to
11 respond.

12 97. Defendant denies that it has caused Plaintiff the damages alleged or
13 that it engaged in wrongful conduct. Defendant lacks information and knowledge
14 sufficient to form a belief as to the truth of the remaining allegations and, on that
15 basis, denies them in their entirety.

16 98. Defendant denies that it has caused Plaintiff the damages alleged or
17 that it engaged in wrongful conduct. Defendant lacks information and knowledge
18 sufficient to form a belief as to the truth of the remaining allegations and, on that
19 basis, denies them in their entirety.

20 99. Defendant denies that it has caused Plaintiff the damages alleged.
21 Defendant lacks information and knowledge sufficient to form a belief as to the
22 truth of the remaining allegations and, on that basis, denies them in their entirety.
23 To the extent the paragraph contains arguments and legal conclusions, Defendant
24 is not required to respond.

25 100. Denied as to the allegations pertaining to Defendant. To the extent the
26 paragraph contains arguments and legal conclusions, Defendant is not required to
27 respond.

1 Fourth AFFIRMATIVE DEFENSE

2 **(Settlement and Release of Claims)**

3 Plaintiff's Complaint, and each and every cause of action alleged therein, is
4 barred, or at least limited, to the extent Plaintiff previously settled and released his
5 claims against Defendant.

6 Fifth AFFIRMATIVE DEFENSE

7 **(Waiver, Estoppel, Laches, Excuse, Mistake, and Unclean Hands)**

8 Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel,
9 laches, excuse, mistake, and/or unclean hands.

10 Sixth AFFIRMATIVE DEFENSE

11 **(After-Acquired Evidence)**

12 Plaintiff's recovery is limited in whole or in part by the doctrine of after-
13 acquired evidence.

14 Seventh AFFIRMATIVE DEFENSE

15 **(Failure to Mitigate)**

16 Plaintiff's claims are barred or diminished by the failure of Plaintiff to
17 mitigate.

18 Eighth AFFIRMATIVE DEFENSE

19 **(Losses Caused by Plaintiff)**

20 Defendant, denying any wrongdoing on its part, and expressly denying that
21 Plaintiff has been damaged as alleged, asserts that any damage or pecuniary loss
22 Plaintiff has sustained has been proximately caused by Plaintiff's own actions or
23 inactions.

24 Ninth AFFIRMATIVE DEFENSE

25 **(No Injury to Plaintiff / Losses *De Minimis*)**

26 Defendant, denying any wrongdoing on its part, asserts that Plaintiff has not
27 suffered any injury, damage, loss or harm due to any actions of Defendant or any
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1 failure to act by Defendant, or that any damage or pecuniary loss Plaintiff has
 2 sustained is *de minimis*.

3 Tenth AFFIRMATIVE DEFENSE

4 **(Failure to State a Claim for Attorneys' Fees)**

5 The Complaint fails to state a claim upon which an award of attorneys' fees
 6 can be granted.

7 Eleventh AFFIRMATIVE DEFENSE

8 **(Punitive Damages Unconstitutional)**

9 Any claim for punitive damages is unconstitutional under the California and
 10 Federal Constitutions and in particular pursuant to the due process, equal
 11 protection and/or excessive fines clauses contained therein.

12 Twelfth AFFIRMATIVE DEFENSE

13 **(Failure to State Claim to Support Punitive Damages)**

14 Plaintiff is not entitled to recover any punitive or exemplary damages and
 15 any allegations with respect thereto should be stricken because:

16 (a) Plaintiff has failed to plead facts sufficient to support
 17 allegations of oppression, fraud, and/or malice (Cal. Civ. Code § 3294(a));

18 (b) Plaintiff has failed to plead facts sufficient to support
 19 allegations of gross or reckless disregard for the rights of Plaintiff, or that
 20 Defendant was motivated by evil motive or intent; and

21 (c) Neither Defendant nor any of its officers, directors or
 22 managing agents committed any alleged oppressive, fraudulent or malicious act,
 23 authorized or ratified such an act, or had advance knowledge of the unfitness, if
 24 any, of any employee or employees who allegedly committed such an act, or
 25 employed any such employee or employees with a conscious disregard of the
 26 rights or safety of others (Cal. Civ. Code § 3294(b)).

27 ///

1 Thirteenth AFFIRMATIVE DEFENSE

2 **(Workers' Compensation Act Exclusivity)**

3 Plaintiff's claims, to the extent they are based in whole or in part upon any
4 alleged physical or emotional injury or distress, are barred by the exclusive
5 remedy provisions of the California Workers' Compensation Act, California
6 Labor Code section 3600, *et seq.*

7 Fourteenth AFFIRMATIVE DEFENSE

8 **(Legitimate Non-Discriminatory Business Reasons)**

9 There were legitimate, non-retaliatory, nondiscriminatory business reasons
10 for the decisions about which Plaintiff complains.

11 Fifteenth AFFIRMATIVE DEFENSE

12 **(Outside Course and Scope of Employment)**

13 Defendant is not liable for any acts or omissions of any person who was not
14 acting within the course and scope of his/her duties as an employee, agent,
15 director, officer, or constituent member of Defendant.

16 Sixteenth AFFIRMATIVE DEFENSE

17 **(Actions Outside Control of Defendant)**

18 Any harm or injury suffered by Plaintiff, the existence of such harm or
19 injury being specifically denied, is the result of the actions of others not within the
20 control of Defendant.

21 Seventeenth AFFIRMATIVE DEFENSE

22 **(No Wrongful Conduct By Managing Agents)**

23 Plaintiff has not alleged and/or cannot demonstrate any wrongful conduct
24 by any managing agents, and Defendant further alleges that it never ratified or
25 condoned any unlawful or tortious conduct of any employee or individuals.

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1 Eighteenth AFFIRMATIVE DEFENSE

2 **(Non-Willful Conduct)**

3 Even if the misconduct as alleged by Plaintiff occurred, which Defendant
4 denies, such misconduct was not carried out in conscious disregard of Plaintiff's
5 rights, nor was it willful, intentional, knowing or deliberate.

6 Nineteenth AFFIRMATIVE DEFENSE

7 **(No Malice / Good Faith)**

8 Some or all of Plaintiff's claims for damages alleged in the Complaint are
9 barred in that all decisions and actions of Defendant with respect to the subject
10 matter of this lawsuit were undertaken in good faith, in the absence of malicious
11 intent, and constituted a lawful, proper and justified means to further its legitimate
12 economic interests.

13 Twentieth AFFIRMATIVE DEFENSE

14 **(Avoidable Consequences)**

15 Plaintiff's claims are barred because Defendant exercised reasonable care to
16 prevent and promptly correct any harassing behavior and Plaintiff unreasonably
17 delayed in taking, or failed to take, advantage of any preventive or corrective
18 opportunities provided by Defendant or to otherwise avoid harm.

19 Twenty-first AFFIRMATIVE DEFENSE

20 **(Failure to Plead with Sufficient Particularity)**

21 Plaintiff has failed to set out his claims with sufficient particularity to
22 permit Defendant to raise all appropriate defenses and, thus, Defendant
23 reserves the right to add additional defenses as the factual basis for these claims
24 become known.

25 Twenty-second AFFIRMATIVE DEFENSE

26 **(Allegations Exceed Scope of Administrative Complaint)**

27 Plaintiff's claims are barred in whole or in part to the extent the acts or
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omissions alleged in Plaintiff's Complaint exceed the allegations alleged in Plaintiff's administrative complaint of discrimination to the California Department of Fair Employment and Housing.

Twenty-third AFFIRMATIVE DEFENSE

(Speculative and Uncertain Damages)

Plaintiff's damages, if any, are speculative and uncertain and thus cannot be recovered.

Twenty-fourth AFFIRMATIVE DEFENSE

(Consent)

Plaintiff's claims are barred in whole or in part, or the relief under such claims is limited, because Plaintiff consented to the alleged conduct.

Twenty-fifth AFFIRMATIVE DEFENSE

(Privilege / Justification)

Plaintiff's claims are barred in whole or in part because any alleged acts and/or omissions attributable to Defendant were justified and/or privileged.

Twenty-sixth AFFIRMATIVE DEFENSE

(Undue Hardship)

Plaintiff's claims are barred in whole or in part because any proposed accommodations of Plaintiff's alleged disability would create an undue hardship to the operation of Defendant's business.

Twenty-seventh AFFIRMATIVE DEFENSE

(Health or Safety Risk)

Plaintiff's claims are barred in whole or in part because, even with reasonable accommodations of Plaintiff's alleged disability, Plaintiff was still unable to perform at least one essential job duty without endangering his health or safety or the health or safety of others.

///

1 WHEREFORE, Defendant prays:

- 2 1. That Plaintiff take nothing by the Complaint;
- 3 2. That the Complaint be dismissed with prejudice;
- 4 3. That Defendant recovers its costs of suit herein, including reasonable
- 5 attorneys' fees; and
- 6 4. That this Court grant such other further relief as it may deem

7 appropriate.

8

9 Dates: December 7, 2015

Respectfully Submitted,

10 FOX ROTHSCHILD LLP

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12 /s/ Lee B. Szor

13 Alexander Hernaez

14 Lee B. Szor

15 Attorneys for Defendant SPACEX

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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 years and not a party to this action; my business address is: 345 California Street, Suite 2200, San Francisco, CA 94104.

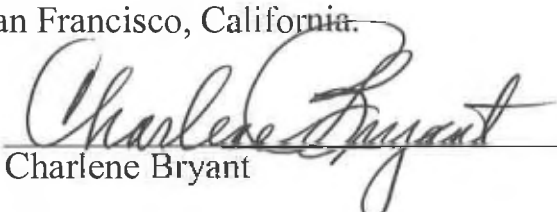
On the date specified below, I filed the foregoing document(s):

DEFENDANT SPACEX' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES

with the Clerk of the Court for the United States District Court by using the CM/ECF system. Participants in the case who are registered CM/EMF users will be served by the CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed December 7, 2015 at San Francisco, California.


Charlene Bryant